BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

RACHEL LARSON, as the surviving spouse of Tony L. Larson, deceased	)	
Claimant	)	
VS.	)	
	)	Docket No. 258,129
M&M SUPPLY CO., INC.	)	
Respondent	)	
AND	)	
	)	
ST. PAUL FIRE & MARINE	)	
Insurance Carrier	)	

ORDER

Claimant appealed the May 21, 2001 Award entered by Administrative Law Judge Jon L. Frobish. The Board heard oral argument on November 9, 2001, in Wichita, Kansas.

APPEARANCES

Timothy J. King of Wichita, Kansas, appeared for claimant. Gary K. Albin of Wichita, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award.

ISSUES

This is a claim for an October 29, 1999 vehicle accident that resulted in Tony L. Larson's death. At the time of the accident, Mr. Larson intended to deliver a can of paint to a customer while on his way home. In the May 21, 2001 Award, Judge Frobish denied the request for workers compensation benefits, finding that the vehicle accident did not arise out of claimant's employment. The Judge concluded the accident occurred while

claimant was on his way to pick up his wife, an errand that was personal in nature. The Judge wrote, in part:

> Combining both business and personal tasks does not take Claimant's travel outside of the scope of [the] Worker's Compensation Act and render any injury sustained in the course of the trip noncompensable. However, if there is a significant and substantial deviation from the business trip for the employer, then the Claimant is on personal business. The Claimant had not taken the direct route to achieve the business purpose. It is clear to the Court that he had not yet even started the business portion of the trip. The Claimant was on his way to pick up his wife. Had he accomplished this goal, it could then be said that he started his business portion of the trip.
>
> The Court cannot find that the Claimant's injury arose out of the nature, conditions, obligations, and incidents of his employment. Neither can the Court find that the accident was in the course of employment related to the time, place, and circumstances under which the accident occurred.
>
> . . .
>
> The Claimant's accidental injury did not arise out of the course of employment.

Decedent's widow filed this appeal, contending Judge Frobish erred by incorrectly analyzing the accident as occurring during the course of a business trip, instead of occurring during a trip having a dual purpose involving both business and personal matters. Claimant argues that deviating from the business aspect of a trip does not defeat a claim for an accident that occurs during a dual purpose trip. Accordingly, claimant requests the Board to reverse the Award and order the payment of benefits.

Conversely, respondent and its insurance carrier contend the Award should be affirmed.

The only issue before the Board on this appeal is whether the October 29, 1999 accident arose out of and in the course of decedent's employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Board finds and concludes:

The Award denying benefits should be affirmed.

On the date of accident, October 29, 1999, the decedent volunteered to drop off on his way home a pint of paint to a customer. The location in southeast Wichita where decedent intended to deliver the paint was only a short distance from decedent's residence.

The Board finds that when the accident occurred decedent was on his way to pick up his wife, who was at work in northeast Wichita. The decedent was killed when he lost control of his car in heavy rain and slid across a grassy median into the path of oncoming traffic. The accident occurred before decedent and his wife began their trip home. Claimant argues that the fatal traffic accident is compensable as decedent's trip home had a dual purpose, one of which was personal and one of which was work-related.

The Board agrees with the Judge's analysis that had the accident occurred while decedent was en route to deliver the paint the fact that decedent was intending to go home afterwards would not detract from the business purpose of the trip. But, under these facts, it cannot be said that the accident occurred while decedent was delivering the paint.

Contrary to claimant's contentions, the Board concludes a dual purpose trip is merely another kind of business trip and, therefore, the analysis that is applicable to single purpose business trips is also applicable to dual purpose trips. Accordingly, substantial deviations from the business purpose of any trip may defeat a claim for workers compensation benefits.

Only those accidents that arise out of and in the course of employment are compensable under the Workers Compensation Act.[1]

For an accident to arise out of employment, there must be a causal connection between the accident and the nature, conditions, obligations, or incidents of the employment.[2] The requirement that the accident occur in the course of employment relates to the time, place, and circumstances under which the accident occurred and means the accident happened while the worker was working for the employer.[3] In *Newman*, the Kansas Supreme Court held:

> The two phrases, arising "out of" and "in the course of" the employment, as used in our workmen's compensation act (K.S.A. 1972 Supp. 44-501), have separate and distinct meanings, they are conjunctive and each condition must exist before compensation is allowable. The phrase "in the course of"

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[1] See K.S.A. 1999 Supp. 44-501.

[2] See *Newman v. Bennett*, 212 Kan. 562, 512 P.2d 497 (1973); *Martin v. U.S.D. No. 233*, 5 Kan. App. 2d 298, 615 P.2d 168 (1980); and *Hensley v. Carl Graham Glass*, 226 Kan. 256, 597 P.2d 641 (1979).

[3] See *Hormann v. New Hampshire Ins. Co.*, 236 Kan. 190, 197, 198, 689 P.2d 837 (1984).

> employment relates to the time, place and circumstances under which the accident occurred, and means the injury happened while the workman was at work in his employer's service. The phrase "out of" the employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. An injury arises "out of" employment if it arises out of the nature, conditions, obligations and incidents of the employment.[4]

Whether an accident arises out of and in the course of a worker's employment depends upon the facts peculiar to the particular case.[5]

The Board concludes that at the time of the accident decedent was not delivering paint for respondent but, instead, going to pick up his wife from work. Accordingly, the accident was neither causally related to claimant's work activities nor did it occur while decedent was furthering respondent's business interests.[6]

The Workers Compensation Act places the burden of proof on claimants to establish their right to compensation.[7] And that burden is to persuade the trier of facts by a preponderance of the credible evidence that claimants' position on an issue is more probably true than not when considering the whole record.[8]

Because claimant has failed to prove that the fatal October 1999 accident arose out of and in the course of decedent's employment, the request for benefits must be denied.

AWARD

WHEREFORE, the Board affirms the May 21, 2001 Award entered by Judge Jon L. Frobish.

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[4] *Newman*, *ibid.*, syl. 1.

[5] *Newman*, *ibid.*, syl. 3, citing *Carter v. Alpha Kappa Lambda Fraternity*, 197 Kan. 374, 417 P.2d 137 (1966).

[6] *Chapman v. Victory Sand & Stone Co.*, 197 Kan. 377, 416 P.2d 754 (1966).

[7] K.S.A. 1999 Supp. 44-501(a).

[8] K.S.A. 1999 Supp. 44-508(g).

IT IS SO ORDERED.

Dated this ____ day of December 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Timothy J. King, Attorney for Claimant
Gary K. Albin, Attorney for Respondent and its Insurance Carrier
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Workers Compensation Director